In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 414

ALPHONSO W. KYLES, PETITIONER

v.

PAUL H. PRESTON, SUPERINTENDENT, DISTRICT OF COLUMBIA JAIL, and LUKE C. MOORE, UNITED STATES MARSHAL FOR THE DISTRICT OF COLUMBIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

Petitioner seeks review of an order of the Court of Appeals for the District of Columbia affirming the district court's denial of a petition for a writ of habeas corpus challenging petitioner's extradition to Maryland.

Petitioner had been ordered extradited to Maryland on March 30, 1966, by the Chief Judge of the District of Columbia acting in his executive capacity

pursuant to 23 D.C. Code 401. The extradition was ordered under a Maryland indictment which charged that on February 23, 1966, petitioner unlawfully escaped from the Eastern Correctional Camp in Maryland. At the hearing before the Chief Judge, petitioner admitted that he was the person named in the indictment and that he had left the Maryland correctional camp without permission of the authorities. He challenged the validity of the indictment for escape on the ground that the conviction under which he was being held at the time of his escape had violated his rights against double jeopardy. This contention was reiterated in a petition for a writ of habeas corpus, considered after the extradition order had been issued. Judge Gasch ordered petitioner turned over to the State of Maryland, finding that petioner was substantially charged in that State with the crime of escaping prison and that he was a fugitive from justice. The Court of Appeals for the District of Columbia affirmed. Petitioner has been released on bond pending action on his present application.

Petitioner argues that the District of Columbia court, in the extradition proceeding, should have decided both that his underlying conviction was unconstitutional and that his act of departing from the camp without use of violence would not constitute the crime of escape under Maryland law in light of the alleged invalidity of the underlying conviction. These questions, however, are not for the District of Columbia to decide. Even if it be assumed that petitioner's attack on his original conviction might provide a

defense to the charge of escape from prison, the claim would have to be raised on the trial of the Maryland charge and adjudicated in the Maryland courts. See *Sweeney* v. *Woodall*, 344 U.S. 86 where this Court held that a claim that conditions of incarceration in the demanding State amounted to cruel and unusual punishment was not a proper subject of hearing in the extradition proceeding. The Court said, 344 U.S. at pp. 89-90:

> By resort to a form of "self help", respondent has changed his status from that of a prisoner of Alabama to that of a fugitive from Alabama. But this should not affect the authority of the Alabama courts to determine the validity of his imprisonment in Alabama. The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the Constitution, contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; * * *

The only issues in the extradition proceeding were: (1) the identity of the person; (2) whether he had been substantially charged with a crime in the demanding State; and (3) whether he was a fugitive from justice, *i.e.*, whether he had been present in the demanding State when the crime was committed. *Bruzaud* v. *Matthews*, 207 F.2d 25, 26 (C.A.D.C.). These criteria were clearly met in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

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